

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ELLE LALLI,

Plaintiff,

-v-

WARNER BROS. DISCOVERY, INC. and WARNER
MEDIA, LLC U.S. SEVERANCE PLAN,

Defendants.
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24-cv-3178 (LJL)

ORDER

LEWIS J. LIMAN, United States District Judge:

On January 23, 2025, Plaintiff, via counsel, filed a notice of voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i). Dkt. No. 59. On the same day, Plaintiff's counsel moved to withdraw as attorney. Dkt. No. 60. On January 28, 2025, Defendants filed a letter stating:

Federal Rule of Civil Procedure 41(a)(1)(A)(ii) provides that a plaintiff may dismiss an action without a court order by filing a stipulation of dismissal signed by all parties who have appeared. Defendants have not agreed to a dismissal without prejudice. Given the extensive motion practice and costly litigation of this case, Defendants submit that any court order dismissing this case should be a dismissal with prejudice.

Dkt. No. 61. On January 30, the Court received an email communication directly from Plaintiff. The communication stated:

Dear Judge Liman -

My name is Elle Lalli. I am currently unclear on the status of whether or not I am represented, so I am writing on my own behalf. At 8:16 pm ET last night (1/29/25), I was forwarded the attached letter objecting to the filing of dismissal without prejudice of my Case 1:24-cv-03178-LJL. I just learned that with letter motions, a response is supposed to be filed within 2 days under the rules; however, no response has been filed; therefore, I am

requesting that you please defer ruling on the defendant's letter motion and allow me additional time (ideally two weeks if possible) to respond.

Sincerely,
Elle Lalli

Defendants' letter raises issues relevant under Federal Rule of Civil Procedure 41(a)(1)(A)(ii). Dkt. No. 61. However, Plaintiff's notice of dismissal was filed under Federal Rule of Civil Procedure 41(a)(1)(A)(i). Dkt. No. 59. This provision states that "the plaintiff may dismiss an action without a court order by filing . . . a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." Fed. R. Civ. P. 41(a)(1)(A)(i). "Rule 41(a)(1)(A) is the only form of dismissal requiring no court action to be effective." *ISC Holding AG v. Nobel Biocare Fin. AG*, 688 F.3d 98, 111 (2d Cir. 2012). Rather, if the requirements of the provision are met, the Plaintiff has the "unfettered right voluntarily and unilaterally to dismiss an action." *Thorp v. Scarne*, 599 F.2d 1169, 1175–76 (2d Cir. 1979).

Here, neither party has served an answer or a motion for summary judgment. Although Defendant has served multiple motions to dismiss, "[t]he plaintiff's voluntary dismissal right is not terminated when . . . defenses are put forward in a motion to dismiss." Charles Alan Wright & Arthur R. Miller, 9 Fed. Prac. & Proc. Civ. § 2363 (4th ed.) (collecting cases). A motion to dismiss is neither an answer nor a motion for summary judgment. The Second Circuit has emphasized that "notices of dismissal filed in conformance with the explicit requirements of Rule 41(a)(1)[(A)] are not subject to vacatur." *Thorp*, 599 F.2d at 1176. Although this bright-line rule may be a "source of great frustration to a defendant," "the drafters employed precise language" which much be given effect. *Id.* at 1175–76. This case has been voluntarily dismissed without prejudice, and the Court has no power to grant Defendants' requested relief.

Plaintiff's counsel of record is directed to provide Plaintiff with a copy of this order.

SO ORDERED.

Dated: January 31, 2025
New York, New York

A handwritten signature in black ink, appearing to read "L. Liman", written over a horizontal line.

LEWIS J. LIMAN
United States District Judge